

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-46b	Time filed:	
Changed to Admin. Code Ref. (R no.):			
1.	Agency: Commerce/Division of Occupational and Professional Licensing		
	Room no.:		
	Building: Heber M. Wells Building		
	Street address 1: 160 East 300 South		
	Street address 2:		
	City, state, zip: Salt Lake City UT 84111-2316		
	Mailing address 1: PO Box 146741		
	Mailing address 2:		
	City, state, zip: Salt Lake City UT 84114-6741		
	Contact person(s):		
	Name:	Phone:	Fax:
	W. Ray Walker	801-530-6254	801-530-6511
			raywalker @utah.gov
(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)			
2.	Title of rule or section (catchline):		
	Division Utah Administrative Procedures Act Rules		
3.	Type of notice:		
	New ___; Amendment XX; Repeal ___; Repeal and Reenact ___		
4.	Purpose of the rule or reason for the change:		
	The Division is filing this rule amendment to address an inconsistency in the rule which was pointed out by the Attorney General's Office. It should be noted that this rule is also being amended by the Division in DAR File No. 31804. Any paragraph numbering changes that need to be made as a result of the two separate rule filings will be done through a nonsubstantive change once both filings are made effective.		
5.	This change is a response to comments from the Administrative Rules Review Committee.		
	Yes ___; No XX		
6.	Summary of the rule change:		
	The termination of a diversion agreement has been moved to Section 201 Formal Adjudicative Proceedings and deleted from Section 202 Informal Adjudicative Proceedings. These amendments are essentially technical amendments to address the inconsistency between the two sections brought about when the statutory provision governing diversion was recodified in 2006. See Subsection 58-1-404(14) for more detail regarding the termination of diversion agreements. The proposed amendments reclassifies the termination of diversion agreements as a formal adjudicative proceeding under the Utah Administrative Procedures Act.		
7.	Aggregate anticipated cost or savings to:		

	A) State budget: The Division anticipates a nominal additional cost to change the termination of diversion agreements from an informal to a formal proceeding. However those nominal costs cannot be quantified as any additional cost is mostly in time and effort to prepare for a formal proceeding.													
	B) Local government: Proposed amendments do not apply to local governments. The proposed amendments only apply to licensed professionals who may not successfully complete their diversion agreement.													
	C) Small businesses (fewer than 50 employees) AND persons other than businesses: The proposed amendments only apply to licensed professionals who may not successfully complete their diversion agreement in which they entered into with the Division. An individual licensed professional would not qualify as a "small business". There may be some nominal additional costs to a licensed professional who has not successfully completed their diversion agreement and proceedings are filed against them to terminate their diversion agreement. However, the Division is unable to quantify these nominal costs as they would not be much more than when the proceeding was classified as an informal adjudicative proceeding. The Division is also not able to determine how many licensed individuals may not successfully complete their diversion agreement.													
8.	Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency): The proposed amendments only apply to licensed professionals who may not successfully complete their diversion agreement in which they entered into with the Division. There may be some nominal additional costs to a licensed professional who has not successfully completed their diversion agreement and proceedings are filed against them to terminate their diversion agreement. However, the Division is unable to quantify these nominal costs as they would not be much more than when the proceeding was classified as an informal adjudicative proceeding.													
9.	Comments by the department head on the fiscal impact the rule may have on businesses: This rule filing corrects a prior inconsistency in the Division rule, clarifying that termination of diversion agreements are designated as formal adjudicative proceedings rather than informal. It is not clear whether in the long run there will be a cost savings or cost increase to regulated individuals as a result of this clarification. However, no fiscal impact to other businesses is anticipated by such change. Francine A. Giani, Executive Director													
10.	This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required): Subsections 63G-4-102(6) and 58-1-106(1)(a)													
11.	This rule adds, updates, or otherwise changes the following titles of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank): 													
12.	The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i> . See Section 63-46a-5 and Rule R15-1 for more information.) A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): 10/15/2008 B) A public hearing (optional) will be held: <table border="1"> <tr> <td>on (mm/dd/yyyy):</td><td>at (time):</td><td>At (place):</td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </table>		on (mm/dd/yyyy):	at (time):	At (place):									
on (mm/dd/yyyy):	at (time):	At (place):												
13.	This rule change may become effective on (mm/dd/yyyy): 10/22/2008													

	NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):		
	administrative procedure	government hearings	
	occupational licensing		
15.	Attach an RTF document containing the text of this rule change (filename):		R156-46b.pr2
To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:	F. David Stanley, Director	Date (mm/dd/yyyy):	08/18/2008

R156. Commerce, Occupational and Professional Licensing.

R156-46b. Division Utah Administrative Procedures Act Rules.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) denial of application for renewal of licensure;
- (b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5);
- (c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6) (b);
- (d) special appeals board held in accordance with Section 58-1-402;
- (e) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;
- (f) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (e);
- (g) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
- (h) board of appeal held in accordance with Subsection 58-56-8(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

- (a) disciplinary proceedings which result in the following sanctions:
 - (i) revocation of licensure;
 - (ii) suspension of licensure;
 - (iii) restricted licensure;
 - (iv) probationary licensure;
 - (v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;
 - (vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and
 - (vii) issuance of a public reprimand; ~~[-and]~~
- (b) unilateral modification of a disciplinary order; and
- (c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

- (a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;
- (b) denial of application for initial licensure or relicensure;
- (c) denial of application for reinstatement of licensure

submitted pursuant to Subsection 58-1-308(6)(a);

(d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection 58-56-8(3);

(g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, except those in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;

(h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(i) approval or denial of request to surrender licensure;

(j) approval or denial of request for entry into diversion program under Section 58-1-404;

(k) matters relating to diversion program;

(l) contested citation hearing held in accordance with Subsection 58-55-503(4)(b);

(m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(o) approval or denial of request for correction of procedural or clerical mistakes;

(p) approval or denial of request for correction of other than procedural or clerical mistakes; and

(q) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) disciplinary proceeding seeking exclusively the issuance of a private reprimand;

(b) nondisciplinary proceeding which results in cancellation of licensure;

(c) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure[~~;~~ and

~~—(d) termination of diversion agreements].~~

KEY: administrative procedure, government hearings, occupational licensing

Date of Enactment or Last Substantive Amendment: [~~November 2, 2004~~]2008

Notice of Continuation: April 25, 2006

Authorizing, and Implemented or Interpreted Law: 63G-4-102(6); 58-1-106(1)(a)